

07 CV 6246

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARC WEILL, TOM GROOS and JOSH COHEN,

JUDGE JONES

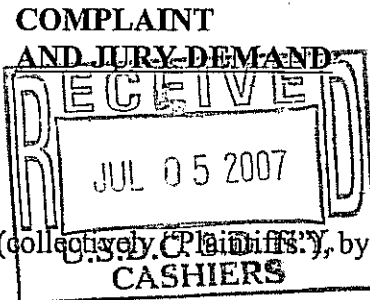
Plaintiffs,

07 Civ. \_\_\_\_\_

— against —

EARTH BIOFUELS, INC.,

Defendant.  
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Plaintiffs Marc Weill, Tom Groos and Josh Cohen (collectively, "Plaintiffs"), by their attorneys Emery Celli Brinckerhoff & Abady LLP, for their complaint, allege as follows:

**PRELIMINARY STATEMENT**

1. This case arises from the breach of a series of agreements between Plaintiffs Marc Weill ("Weill"), Tom Groos ("Groos") and Josh Cohen ("Cohen"), each individually, and Earth Biofuels, Inc. ("Earth").
2. Plaintiffs invested, collectively, \$1.55 million in Earth, a corporation whose principal business is the domestic production, supply and distribution of alternative based fuels.
3. As consideration for their investment, Plaintiffs were granted the right to convert their investment into restricted shares of Earth common stock and to demand that the company register these securities with the United States Securities and Exchange Commission ("SEC") so that Plaintiffs could sell their securities in a public offering.
4. When Plaintiffs exercised their registration rights, however, Earth failed to comply with its contractual obligations and did not file a registration statement with the SEC.

5. Earth's breach, which has never been remedied, has caused Plaintiffs substantial economic injury as the company's stock price has plummeted in the months that have passed since Plaintiffs' initial demand.

6. This action is brought to recoup Plaintiffs' investment and give them the benefit of their bargain.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332, there being diversity of citizenship between plaintiffs and the Defendant and the amount in controversy exceeding \$75,000, and venue is appropriate in the Southern District of New York under 28 U.S.C. § 1391(a).

### **JURY DEMAND**

8. Plaintiffs demand trial by jury in this action.

### **PARTIES**

9. Plaintiff Marc Weill is a resident of Greenwich, Connecticut. During the relevant period, Mr. Weill invested \$750,000.00 in Earth.

10. Plaintiff Tom Groos is a resident of Grand Rapids, Michigan. During the relevant period, Mr. Groos invested \$750,000.00 in Earth.

11. Plaintiff Josh Cohen is a resident of Valhalla, New York. During the relevant period, Mr. Cohen invested \$50,000.00 in Earth.

12. Defendant Earth Biofuels, Inc., ("Earth") is a Delaware corporation, with its principal executive office located at 3001 Knox Street, Dallas, Texas 75205.

**STATEMENT OF FACTS**

13. Earth's principal business is the domestic production, supply and distribution of alternative based fuels consisting of biodiesel, ethanol and liquid natural gas.

14. Plaintiffs Marc Weill, Tom Groos and Josh Cohen, individually, are each investors in Earth Biofuels.

15. Over a three month period, Plaintiffs invested \$1.55 million in Earth Biofuels.

16. In return for these investments, Plaintiffs were granted restricted and unregistered common shares in Earth.

17. Plaintiffs were also granted demand registration rights: the right to compel Earth to cooperate in the registration process with the SEC so that Plaintiffs could sell their shares in the public markets.

18. Plaintiffs communicated their election to convert their investment into shares of Earth common stock and demanded that Earth file with the SEC a registration statement with respect to those shares within 45 days.

19. Earth has acknowledged, through correspondence, Plaintiffs' registration demands.

20. On May 22, 2006, Earth "pledge[d]" to Mr. Weill and Mr. Groos to file a registration statement following the completion of a then-pending transaction with Cowen and Company.

21. Upon information and belief, the Cowen transaction has long been completed but no registration has occurred.

22. Earth has never registered Plaintiffs' shares with the SEC.

23. Earth has, however, acknowledged the breach of its agreements with Plaintiffs.

24. In its Annual Report on Form 10-KSB for fiscal year 2006 filed with the SEC (the "10-K"), Earth acknowledged that the "non-filing of the registration statement impacted and *breached* those certain Registration Rights Agreements with Earth and certain investors including . . . Tom Groos, Marc Weill, [and] Josh Cohen . . ." (emphasis supplied).

25. Plaintiffs have been damaged by Earth's direct, deliberate and demonstrable breaches of its contractual obligations.

**AS AND FOR A FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**

26. Plaintiffs repeat and reallege each of the foregoing paragraphs as if they were fully set forth at length herein.

27. Plaintiffs, individually, and Earth entered into several agreements.

28. Plaintiffs performed under these agreements by investing \$1.55 million in Earth. In exchange for these investments, Earth issued to Plaintiffs unregistered and restricted shares of Earth common stock.

29. Pursuant to the agreements, Plaintiffs demanded that Earth register Plaintiffs' shares with the SEC.

30. Earth never registered the shares and, thereby, breached the agreements.

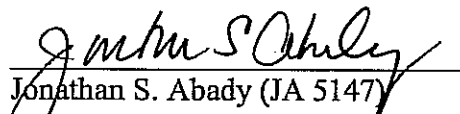
31. Plaintiffs have been damaged by their inability to sell their shares in the public market at the time they exercised their registration rights when the stock price for Earth was favorable.

WHEREFORE, Plaintiffs respectfully request judgment against Earth as follows:

1. Compensatory damages in an amount to be determined at trial;
2. An order awarding Plaintiffs reasonable attorneys' fees, together with the costs of this action; and
3. Such other further relief as the Court may deem appropriate.

Dated: July 5, 2007  
New York, New York

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